

BEFORE THE
UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators 1

Docket No. R2017-5

Hongkong Post - United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Public Representative Comments on
HongKong Post Negotiated Service Agreement

(February 23, 2017)

The Public Representative hereby provides comments in response to the Commission's Notice Initiating the docket.¹ In that Notice, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Notice of a Type 2 rate adjustment in conjunction with a new market dominant international negotiated service agreement (NSA).²

A public (redacted) version of the Hongkong Post 2017 Agreement is provided in Attachment 2. The Postal Service also filed under seal a non-public (unredacted) version of the Hongkong Post 2017 Agreement and a supporting financial model estimating the volume, revenue, costs and contribution of the Agreement.

The Hongkong Post 2017 Agreement is the successor to an existing bilateral agreement with Hongkong Post (Hongkong Post 2015 Agreement), which will expire on March 31, 2017.³ The Postal Service states that the proposed Effective Date for the Hongkong Post 2017 Agreement is April 1, 2017. Notice at 2. The Hongkong Post

¹ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, February 13, 2017.

² United States Postal Service Notice of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, February 10, 2017 (Notice).

³ The Commission approved a three month extension for the 2015 Hongkong Post Agreement. See Order No. 3620.

2017 Agreement is to remain in effect until June 30, 2018, a period of 15 months, unless terminated sooner. *Id.*, Attachment 2 at 7 (Article 22).

The Postal Service states that the negotiated prices in the Hongkong Post 2017 Agreement result in “improvement over default rates established under the Universal Postal Union (UPU) Acts.” *Id.* at 1. The Postal Service also identifies four operational changes in the Hongkong Post 2017 Agreement that it states “should enhance the performance of mail preparation, inbound customs security and contraband screening, processing, transportation, and other functions related to the delivery services provided for inbound letter post items under the Hongkong Post 2017 Agreement.” *Id.* at 5.

Pursuant to Order No. 2148, the Postal Service identifies the China Post 2010 Agreement as the baseline agreement for functional equivalence comparisons.⁴ In this regard, the Postal Service maintains that the Hongkong Post 2017 Agreement is “functionally equivalent to the China Post 2010 Agreement filed in Docket No. R2010-6.” *Id.* at 9. The Postal Service lists differences between the China Post 2010 Agreement and the Hongkong Post 2017 Agreement that it asserts do not materially alter the similarity of cost or market characteristics. Notice at 10-12.

COMMENTS

The Public Representative has reviewed the Postal Service’s Notice, and the Hongkong Post 2017 Agreement and supporting financial model filed under seal with the Notice. The Public Representative also reviewed the financial model for the China Post 2010 Agreement filed under seal in Docket No. R2010-6.

Based upon that review, the Public Representative concludes that the Hongkong Post 2017 Agreement is functionally equivalent to the baseline China Post 2010 Agreement. Moreover, the Public Representative finds that the Hongkong Post 2017 Agreement is likely to improve the net financial position of the Postal Service. The Postal Service compares the cost coverage at the negotiated prices and at UPU terminal dues rates to show that Hongkong Post 2017 Agreement to determine the net financial impact of the agreement. The results show an improvement in cost coverage

⁴ *Id.* at 9, *citing* Order No. 2148, Order Granting, In Part, Motion for Partial Reconsideration of Order No. 1864 and Modifying, In Part, Order No. 1864, Docket No. 2013-9, August 11, 2014.

compared to the cost coverage at the terminal dues rates established by the UPU. Thus, the Public Representative concludes that the negotiated prices in Hongkong Post 2017 Agreement “improve the net financial position of the Postal Service.” 39 U.S.C. § 3622(c)(10)(A)(i).

The Postal Service also identifies, pursuant to 39 C.F.R. § 3010.42(g), four operational changes in the Hongkong Post 2017 Agreement that it claims “should enhance” the performance of mail preparation, processing, transportation or other functions. Those changes are:⁵

- Revised rates and terms for small packets with delivery scanning;
- Advance electronic customs data requirements;
- Improved business settlement processes between the parties; and
- Sortation and induction requirements.

The Postal Service provides no discussion, documentation or analysis to support its claim that the identified operational changes “should enhance” the operational performance of the Postal Service. As a result, the Public Representative cannot evaluate the expected impact, financial or otherwise, of such changes on the Postal Service’s operational performance during the term of the Agreement.

39 U.S.C. § 3622(c)(10) also requires that the agreement will be available on public and reasonable terms to similarly situated mailers, and will not cause unreasonable harm to the marketplace. With respect to these requirements, the Postal Service makes reasonable arguments that such criteria are not implicated by the Hongkong Post 2017 Agreement. *Id.* at 2-6.

The Public Representative respectfully submits the foregoing comments for the Commission’s consideration.

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⁵ Notice at 5.

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